

7. **ISSUE: Re: MACE: HENDERSHOTT'S MISMANAGEMENT AND POLITICALLY MOTIVATED INVESTIGATIONS - SUBJECT: HENDERSHOTT**

H7A. Allegedly, Chief Deputy David Hendershott directed the MACE Unit to conduct investigations based on political considerations, rather than legitimate enforcement of the law. Further, Hendershott became preoccupied with and mismanaged MACE, interfered with and micromanaged investigative activities, and compelled MACE investigators to engage in activities with which they professionally disagreed due to ethical, legal or other considerations.

Relevant MCSO Policies

Policy CP-2, Code of Conduct

3. **Unbecoming Conduct and Public Demeanor:**

A. Employees shall conduct themselves at all times, both on- and off-duty, in such a manner as to reflect favorably on the Office. Unbecoming conduct shall include disorderly conduct, and activities that conflict with, or have the potential to conflict with, Office duties; tend to bring the Office into disrepute; reflect discredit upon employees as members of the Office; or tend to impair the operation and efficiency of the Office or any of its employees.

29. **Incompetence/Failure to Meet Standards:**

A. Incompetence is the inability, unwillingness, or failure to perform assigned duties in an acceptable manner, or the failure to accomplish a reasonable share of the workload.

B. Incompetence may be demonstrated by the following:

3. Failure to conform to work standards established for the employee's rank or position.
4. Failure to make reasonable decisions or take appropriate actions.
5. Actions, which are unreasonable, or clearly inappropriate for the situation.

41. **Use of Discretion:**

A. Policy cannot be written to cover every situation in which an employee may become involved. The employee must use discretion in the enforcement of laws, and in determining appropriate actions.

B. When employees are faced with a situation in which discretion can be exercised, they shall evaluate the circumstances, and consider available resources and alternate solutions.

They should rely on their training, Office Policy, established procedures, statutes, and the direction of supervisors in making a decision.

Allegation H7A, Investigative Findings: SUSTAINED

The investigation revealed that the Chief Deputy for MCSO, David Hendershott, was involved to an extraordinary extent in the operations of the MACE unit. Comments from Executive Chief Jerry Sheridan and former Chief Deputy Terry Young, who Hendershott highly respects, are instructive about the highly unusual involvement of Hendershott in an investigative unit in a law enforcement agency.

Sheridan's comments were as follows.

...My opinion of the MACE issue was, that you had, while you had the Chief Deputy involved in the investigation, which I had seen in the history of the office, Joe Arpaio is the fourth Sheriff I've worked for, the Chief Deputy should not be conducting investigations. Your Chief Deputy should be a Chief Deputy and your Detectives, Captain, Sergeant, Lieutenant, those are the ones that should be conducting investigations. The Chief Deputy should not be sittin' in his office calling the shots. I've seen two other Sheriffs lose elections because they've had their Chief Deputies meddling in police work. They're not Detectives, and so when, you know, all this happened and seeing the Chief Deputy involved in the case, I felt a little bit better about it because we also had a Deputy County Attorney who some people thought was very competent and a couple of others thought maybe not so competent. Was there, had an office in our building and was, you know, doing what prosecutors do, they help ramrod the investigation, make sure that all the probable cause is there for the search warrants, make sure you add the elements of the crime, make sure that everything is there so that when they bring it to court to prosecute the case, everything is in a nice neat little package. So, I didn't pay much attention to what the MACE Unit was doing. I knew because people were going in and out....

....As people were being moved in and out, you know, I'd hear, you know, in the hallways, you know, so and so was mad, Hendershott and this and that. You know, I just chalked that up to the way Dave is. Dave is very difficult to work with and around, and he's very demanding. And it's either Dave's way or the highway, and so I'm sure he ate up Detectives and spit em out. And if they balked at him and you know, questioned him, I'm sure they were replaced with a fresh one the next day. And that's what I attributed this to, but I always went back to my thought process was, hey, you got the Deputy County Attorney, a high ranking Deputy county attorney assigned to the MACE Unit, she's overseeing all this. I'm sure they take this information back, round table it over at the County Attorney's Office with the rest of the prosecutors and we're fine.

Q: You're referring to Lisa Aubuchon?

A: Yes, Sir. And so that's why I never really paid a lot of attention to it. (pp. 26-27, Exhibit II37)

When asked about Hendershott's intimate involvement in MACE, and whether it was unusual for a Chief Deputy to be so intimately involved in investigative activities, Terry Young's response was as follows.

A: I would say certainly, but it's not outside of his character for sure. His personality and leadership style is such that if he gets involved in something, he's like the consummate corporal. You know what I mean, he wants to be the guy with his hands on and making all the decisions and just right there on top of things. He doesn't want, in other words, going through me to get things done is just, I'm in his way. He just is going to go right to whoever he needs to get to and have it done. So that's not uncommon for him, but it's very unique for any other investigative branch I've ever been a part of in the office. (p. 38, Exhibit II45a)

No direct evidence was gathered suggesting that Hendershott's direction of the MACE unit, or selection of suspects to investigate, was directed by political considerations – no interviewee indicated that Hendershott told them that certain persons were being targeted because they were opponents of the Sheriff Arpaio or MCSO, or had caused problems for the Sheriff or MCSO. The PCSO Team did not thoroughly investigate the numerous cases investigated by MACE over the years, or attempt to catalog and analyze who was investigated and whether there was any pattern indicating that these persons or entities were political opponents or practical obstructions to MCSO or its agenda. As such, we cannot draw any informed conclusions about the motivations of Hendershott in selecting the targets of the MACE investigations.

There is considerable evidence that Hendershott's conduct, in his direction of the MACE unit, was contrary to sound law enforcement practice and utilization of resources.

The preponderance of evidence indicates the following.

- Hendershott exercised virtually complete control over what investigations were conducted. Investigative leads (the reports of alleged illegal acts that prompted the investigations) were not discovered or brought forth by MACE personnel, but were provided by Hendershott, and he authorized all the investigations. Typically, in an organized crime bureau, leads for investigations would come in from a variety of sources to the investigative personnel or others – the leads are not brought in virtually exclusively one individual, in this case, the Chief Deputy.
- Hendershott at times ignored the chain of command in MACE, giving instructions directly to the detectives, and ignoring their supervisors, who at times were

unaware of what Hendershott had asked them to do. This occurred at times when the MACE command structure below Hendershott disagreed with or had problems with the direction an investigation was taking and with the requests for investigation or other work that Hendershott ordered.

- Hendershott often did not explain the reasons for the investigative tasks that he assigned. He claimed that only he (and when Ms. Aubuchon was involved, Lisa Aubuchon) knew the intricacies of the cases under investigation. As several former members of MACE commented during the present administrative investigation, the MACE investigators were told who to interview and what they were to ask, but frequently were not told why the interviews were being conducted. MACE personnel were often not given the "big picture" as to what an investigation concerned.
- Hendershott, at one point, was involved in what appears to be the point of paranoid obsession with the cases, basically secluding himself in his office in a "war room" atmosphere, and would not allow other MCSO personnel to enter his office.
- Hendershott created a work environment in MACE that was difficult and distressful for subordinates. They were overworked, and had questions about the propriety of what they were asked by him to do.
- Hendershott set up an atmosphere in which Deputy County Attorneys (particularly Lisa Aubuchon) were directing investigations essentially as case agents, and not functioning as legal advisors.
- Hendershott made clearly unreasonable, if unfathomable, requests of investigative personnel, asking them to, for example, interview on one weekend all the city council members for the east valley about an issue.
- Hendershott would generally not accept opinions from even bright, experienced personnel that conflicted with his own ideas about the directions that investigations should take. His typical response, when confronted with differences of opinion about investigations, was that the persons who questioned his directives did not understand the cases and their complexity.
- Hendershott's own comments suggest that, despite the complexity of the investigations in MACE, he did not populate the MACE staff with experienced investigators (excepting the Sergeants); rather, he was looking for "good deputies." One would think that Hendershott would have been insistent on having the "cream of the crop," in terms of seasoned detectives, to investigate MACE cases. However, given the manner in which the detectives were

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deployed, basically as performers of investigative tasks, the fruits of which were analyzed by him, it may have been expedient for him to have a relatively inexperienced staff. There was, at one point, a time when Hendershott brought in the Threats Unit,⁸ whose detectives were reportedly highly experienced, but they were in relatively short order shipped out of MACE because he was not happy with their performance.

The preponderance of evidence indicates that Hendershott's actions and behaviors with respect to the MACE unit have brought disrepute to the Maricopa County Sheriff's Office, and that he is in violation of Policy No. CP-2, 3.A, Unbecoming Conduct and Public Demeanor, 29.A and 29.2, Incompetence/Failure to Meet Standards, and 41, Use of Discretion.

⁸ A special investigative unit assigned to the investigation of threats against public officials, including Sheriff Arpaio.

8. ISSUE: Re: MACE: HENDERSHOTT ORDERED A SEARCH WARRANT TO BE WRITTEN AGAINST COUNTY BOARD OF SUPERVISORS WITHOUT PROBABLE CAUSE – SUBJECT: HENDERSHOTT

H8A. Allegedly, Chief Deputy David Hendershott ordered Lt. Rich Burden, in the presence of Sgt. Jeff Gentry, Deputy Chief Bill Knight and Executive Chief Scott Freeman, to prepare a Search Warrant for the offices of the County Board of Supervisors in connection with reports that the County had paid funds to a vendor for a sweep of County offices for listening devices following a prior MCSO Search Warrant. Burden and others present told Hendershott that there was insufficient probable cause for the Search Warrant, and they refused to prepare what they considered to be illegal search warrant of the offices of the Maricopa County Board of Supervisors.

Relevant MCSO Policies

Policy CP-2, Code of Conduct

3. Unbecoming Conduct and Public Demeanor:

- A. Employees shall conduct themselves at all times, both on- and off-duty, in such a manner as to reflect favorably on the Office. Unbecoming conduct shall include disorderly conduct, and activities that conflict with, or have the potential to conflict with, Office duties; tend to bring the Office into disrepute; reflect discredit upon employees as members of the Office; or tend to impair the operation and efficiency of the Office or any of its employees....
- D. Employees shall conduct themselves in a manner that will foster harmony and cooperation among themselves and other members of the Office.

4. Immoral Conduct:

- A. Employees shall maintain a high level of moral and ethical conduct at all times, and shall be honest, fair, impersonal, and polite when working, or identified as employees of the Office.

21. Employee Relationships with Other Employees:

- A. Employees shall maintain a professional, courteous, cooperative demeanor with other employees of the Office, and other law enforcement or criminal justice personnel.

28. Truthfulness: See Policy CP-5, *Truthfulness*.

29. Incompetence/Failure to Meet Standards:

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- A. Incompetence is the inability, unwillingness, or failure to perform assigned duties in an acceptable manner, or the failure to accomplish a reasonable share of the workload.
 - B. Incompetence may be demonstrated by the following:
 - 3. Failure to conform to work standards established for the employee's rank or position.
 - 4. Failure to make reasonable decisions or take appropriate actions.
 - 5. Actions, which are unreasonable, or clearly inappropriate for the situation.
41. Use of Discretion:
- A. Policy cannot be written to cover every situation in which an employee may become involved. The employee must use discretion in the enforcement of laws, and in determining appropriate actions.
 - B. When employees are faced with a situation in which discretion can be exercised, they shall evaluate the circumstances, and consider available resources and alternate solutions. They should rely on their training, Office Policy, established procedures, statutes, and the direction of supervisors in making a decision.

TRUTHFULNESS, MCSO Policy No. CP-5, eff. 9/28/06 (Also see CP-2, 28)

1. **Truthfulness:** Our integrity defines who we are as an organization both internally and externally. The degree to which we obtain and sustain trust among our peers determines not only our organizational effectiveness but also directly impacts our individual safety and security. The degree to which we obtain and sustain the public's trust determines our effectiveness in crime prevention, investigation, prosecution, and conviction. Therefore, if the entire foundation for whom we are as an organization rides on integrity, both as a law enforcement agency and as individuals, when is it acceptable to lie? The answer is: *Under NO circumstance is it acceptable to lie if an employee is being questioned by a supervisor, an administrative investigator, a criminal investigator, or a polygraph examiner regarding any subject, at any time, that is job related, may affect their job, may impact coworkers, or may bring discredit to the Office.* This Policy is in no way intended to infringe upon the rights of an employee against self-incrimination in a criminal matter, but serves notice that the Fifth Amendment is not a protection for deception.
- A. Employees shall not intentionally, knowingly, or willingly make a false statement relative to a material fact during the course of an official investigation.
 - B. An employee, for the purpose of committing fraud or deceit, shall not knowingly make false official records, or enter, or cause to be entered into any books, logs, records, or reports any inaccurate, false, or improper information or material.
 - C. Employees shall not knowingly mislead or misrepresent themselves to the public or other governmental agencies in the course of their duties or regarding their duties or position

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with the Office. Employees shall not knowingly make false statements to the public or other governmental agencies that may discredit the Office or any of its employees.

- D. This Policy will not apply to an administrative investigator, a criminal investigator, or a polygraph examiner while gathering information or evidence during an ongoing investigation. It is recognized that an administrative investigator, a criminal investigator, or a polygraph examiner may mislead a subject as part of an investigative or interview technique.
- E. All allegations of untruthfulness shall be documented in a memorandum and forwarded immediately through the chain of command to the Chief Deputy. Only the Chief Deputy, or his designee, may make a finding on a truthfulness allegation.
- F. A sustained violation of this Policy shall result in termination of employment.

Allegation H8A, Investigative Findings: SUSTAINED

The evidence gathered in the investigation clearly supports the allegations about Hendershott's behavior.

The illogic of Hendershott's position, as to why the search warrant was appropriate, was astounding. Based on an article that appeared in the paper, that the offices of the Board of Supervisors had been swept by a vendor at a significant cost to County taxpayers, Hendershott was suggesting that a search warrant was appropriate because the County was trying to detect and remove listening devices that the Sheriff's Office may have installed, and were therefore destroying evidence or County property – but MCSO had no listening devices in the BOS offices. The other aspect of his logic was that the County was using taxpayer funds for the sweep, and there were questions, apparently, as to whether the contract had been properly procured.

Lt. Rich Burden's reaction to Hendershott's logic was as follows.

- A. I thought this was a joke. And he said, the County Board of Supervisors, the last time we went up there to do a search warrant, thought we left listening devices or something like that. It's what my intel is telling me, or my inside guy. And I mean, I'm like, we have an inside guy? You know, I'm going to learn all this, but it's going to take me some time to know who all the players are. And he said that the County Board of Supervisors utilized Defender to VHF, UHF airwave sweep a room. And they spent like \$10,000 or \$15,000 or \$30,000 to do this, large sum of money, and misappropriated those funds. I said what were they sweeping for? Well, they think we left bugs in there. So this is what I want you to write. I said, what would you want me to write a search warrant on? Well, if we did put bugs in there, and they would have found them, they would have destroyed them, right? I said, did we have bugs there, or did we have listening

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devices there, guys, don't think I'm nuts about this. This is what I've been asked to do.

Q: So what was the response to that question?

A: Well, I wasn't done asking the question.

Q: Alright.

A: I said, did we have bugs there, and if we did, who wrote, did we have it, we had a Title 3, a T3 written to put these devices there? No. No one, no warrant, no on the bugs, none of them, either, they thought we did, that's the beauty behind it. I said what do you want me to write a search warrant on? Well, if they wouldn't have found the bugs, I said, but we didn't have any bugs. No, no, but if they would have, that would have been attempted destruction of County property, destruction of evidence, attempted destruction of evidence. And I started laughing. I'm like, you have got to be kidding me. You have got to be kidding me. (pp. 27-28, Exhibit II 46)

Basically, in the present investigation, Hendershott took the simple position that he had asked that a search warrant affidavit be prepared for the Board of Supervisors' offices. In response, Burden, Freeman and Knight indicated that there was insufficient basis for a search warrant, and he agreed, hence no search warrant was prepared or served.

He denied, or denied having recollection of, Rich Burden's extraordinary account of the repeated requests that Hendershott made through telephone calls to Burden well into the evening, demanding that Burden have the search warrant affidavit on his desk by 7:00 a.m. the following morning.⁹

Further, Hendershott denied, or said that he had no recollection, of:

- Saying to Chief Freeman, when he expressed concerns about the search warrant, something like, "I don't want to hear anything out of the Lake Patrol 10,000 misdemeanors guy over there," referring to Freeman.
- Asserting "I've run out of loyal guys" when told by Burden, Knight and/or Freeman that there was no probable cause.
- Asserting to Burden, in one of the late night telephone calls, that he was going to "machine gun" or "shot gun" Burden, i.e., relieve Burden from MACE duties.

⁹ For a thorough summary of Burden's account, please see pp. 584-592 of the PCSO Report of Administrative Investigation.

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Hendershott's behavior suggests a loss of perspective about the purposes of the MACE unit, and a request for employee action that clearly was inappropriate. Moreover, Hendershott's account of what occurred is in significant conflict with the accounts of Burden, Knight and Freeman about what transpired in their various conversations, suggesting a serious Truthfulness issue.

The preponderance of evidence indicates that, apart from the issue of Truthfulness, Hendershott is in violation of various provisions of Policy No. CP-2, including Section 3.A, Unbecoming Conduct and Public Demeanor, Section 4.A, Immoral Conduct, Section 21.A, Employee Relationships with Other Employees, Sections 29.A and 29.2, Incompetence/Failure to Meet Standards, and 41, Use of Discretion.

9. ISSUE: Re: MACE: HENDERSHOTT THREATENED TO "MACHINE-GUN" BURDEN, KNIGHT AND FREEMAN, AND SUBSEQUENTLY TRANSFERRED THEM FROM MACE RESPONSIBILITIES – SUBJECT: HENDERSHOTT

H9A. Allegedly, after Lt. Rich Burden refused to prepare or order others to prepare an affidavit to secure a search warrant of Board of Supervisors offices, Chief Deputy David Hendershott threatened to "machine gun" or remove Rich Burden, Bill Knight, Scott Freeman and Jeff Gentry from the command structure over MACE, if they did not comply with his orders, which they considered unreasonable and improper. Subsequently, Hendershott removed Burden, Knight, Freeman and Gentry from MACE. Reportedly, Hendershott later told Sheriff Arpaio that he had removed "lazy Deputies" from MACE.

Relevant MCSO Policies

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B. Incompetence may be demonstrated by the following:

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Allegation H9A, Investigative Findings: SUSTAINED

The investigation reflects that Hendershott did make the statements attributed to him, and that he did relieve Freeman, Knight, Burden, Gentry and virtually all of the detectives working under Gentry in the Threats Unit, of any MACE responsibilities. The evidence indicates that these individuals behaved with integrity, raised issues or concerns about directives that Hendershott was proposing, and refused to follow some of Hendershott's directives. In response Hendershott removed them all from service in or over the MACE unit.

The preponderance of evidence indicates that Hendershott violated various provisions of Policy No. CP-2, including Section 3.A, Unbecoming Conduct and Public Demeanor, Section 4.A, Immoral Conduct, Section 21.A, Employee Relationships with Other Employees, Sections 29.A and 29.2, Incompetence/Failure to Meet Standards, and 41, Use of Discretion.